

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:14CR223
	)	
v.	)	
	)	
TERRY LEE HARLAN,	)	ORDER
	)	
Defendant.	)	
_____	)	

This matter is before the Court on defendant's motion *in limine* (Filing No. [29](#)) to suppress evidence of his prior tribal assault convictions. Mr. Harlan faces prosecution under 18 U.S.C. § 117(a), which holds the following:

[a]ny person who commits a domestic assault within . . . Indian country and who has a final conviction on at least 2 separate prior occasions in . . . Indian tribal court proceedings for offenses that would be, if subject to Federal jurisdiction . . . **any** assault . . . shall be fined under this title, imprisoned under this title, or both . . . .

18 U.S.C. § 117(a).

Harlan makes two arguments for suppressing his three prior assault convictions. First, Harlan argues his convictions were attempted assaults (Filing No. [30](#), at 1-5). This argument attempts to create a distinction between "attempted assault," "simple assault," and "aggravated assault;" however, the federal

statute plainly states that "any assault" conviction satisfies its requirements. 18 U.S.C. § 117(a).

Second, Harlan makes a Constitutional argument which the Eighth Circuit has previous rejected. Filing No. [30](#) and Filing No. [36](#) (citing *United States v. Cavanaugh*, 643 F.3d 592 (8th Cir. 2011)). For those reasons, the motion will be denied. Accordingly,

IT IS ORDERED that the defendant's motion (Filing No. [29](#)) is denied.

DATED this 10th day of November, 2014.

BY THE COURT:

/s/ Lyle E. Strom

---

LYLE E. STROM, Senior Judge  
United States District Court